

**UNITED STATES DISTRICT COURT  
SOUTHERN OHIO DISTRICT  
EASTERN DIVISION**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**Case No.: 2:93-CR-101  
JUDGE SMITH**

**JAMES L. EWING,**

**Defendant.**

**ORDER**

This matter is before the Court on Defendant James L. Ewing's *pro se* Motion to Accept his Notice of Appeal as Timely Filed (Doc. 69). The Government has not filed a response to this motion.

On July 27, 2009, this Court entered an Order denying Defendant's Motion to Reduce his Sentence pursuant 18 U.S.C. § 3582 and the crack cocaine reduction (Doc. 64). Rule 4(b) of the Federal Rules of Appellate Procedure provides that criminal appeals must be filed within ten days after judgment is entered. No such Notice of Appeal was filed within ten days.

Defendant now asserts that he did in fact file a timely notice of appeal to this Court's Order. Defendant states that he mailed his notice of appeal on August 3, 2009 via certified mail with prepaid first-class postage. The certified mail envelope was received in the clerk's office and signed for by R. Spraggins on August 6, 2009. Defendant has submitted to proof of the receipt as the signature card is attached to his notice of appeal (Doc. 67).

Based on the evidence presented by Defendant, specifically the certified mail card indicating

receipt by this Court on August 6, 2009, the Court will deem his Notice of Appeal (Doc. 67) timely filed on the date of receipt, August 6, 2009.

Defendant's Motion to Accept his Notice of Appeal as Timely Filed is therefore **GRANTED**.

Defendant's Motion for Extension of Time to File a Notice of Appeal is now **MOOT**.

The Clerk shall remove Documents 66 and 69 from this Court's pending motions list.

**IT IS SO ORDERED.**

/s/ *George C. Smith*

**GEORGE C. SMITH, JUDGE  
UNITED STATES DISTRICT COURT**